

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARTIN LANE HISTORIC AMERICANA,

Plaintiff,

-against-

WILLIAM EBY,

Defendant.  
-----X

Case No.:07-CV-8496

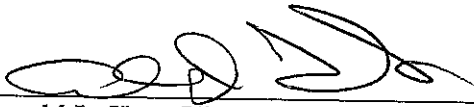
HON. JUDGE STEIN

**NOTICE OF MOTION**

PLEASE TAKE NOTICE, that upon the annexed Affidavit of WILLIAM EBY, the exhibits annexed thereto, the accompanying Memorandum of Law, and the pleadings and proceedings previously had herein, the Defendant, WILLIAM EBY, will move this court, at the United States Courthouse located at 500 Pearl Street New York, NY 10007-1312, on a date to be determined by the Court, at 9:30 a.m. that day or soon thereafter as counsel may be heard, for an Order Pursuant to Rule 12(b)(6) and Rule 11 of the Federal Rules of Civil Procedure granting the Defendant's motion to dismiss Plaintiff's Complaint, imposing sanctions upon the Plaintiff and his attorney and for such other relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, papers and memoranda, if any, are to be served upon the undersigned in accordance with the Federal Rules of Civil Procedure and Local Rule 6.1.

Dated: Garden City, New York  
November 19, 2007

  
\_\_\_\_\_  
Arnold L. Kert, PLLC  
Attorneys for Defendant, William Eby  
By: Arnold L. Kert (ALK 3106)  
666 Old Country Road, Suite 301  
Garden City, New York 11530  
(516) 222-1860

TO: BOCHETTO & LENTZ, P.C.  
Attorneys for Plaintiff  
1524 Locust Street  
Philadelphia, PA 11788  
(215) 735-3900

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STATE OF MARYLAND )

COUNTY OF FREDERICK )

) SS:

I, WILLIAM EBY, being duly sworn, depose and say:

1. I am the Defendant in the above-captioned action. As such, I am fully familiar with the facts and circumstances heretofore had herein.

2. This Affidavit is respectfully submitted in support of the within motion seeking an Order pursuant to Rule 12(b)(6) and Rule 11 of the Federal Rules of Civil Procedure dismissing the Plaintiff's Complaint, imposing sanctions on the Plaintiff and his attorney and for such other and further relief as this court deems just and proper.

3. The pertinent facts of this case are as follows: On December 28, 1997, I entered into a consignment agreement with Larry Wilson (hereinafter "Wilson"), a dealer in antique firearms. Pursuant to said agreement, a copy of which is annexed hereto as Exhibit "A," Wilson was to sell a Colt Texas or Holster Model Paterson revolver, belonging to myself, for an agreed upon price of five-hundred thousand (\$500,000.00) dollars.

4. Wilson did successfully procure the sale of my Colt firearm for a price of five-hundred thousand (\$500,000.00) dollars. However, as of November 23, 1999, one-hundred ninety-two thousand (\$192,000.00) dollars of the purchase price had still not been remitted to

Case No.:07-CV-8496

HON. JUDGE STEIN

**AFFIDAVIT OF**  
**WILLIAM EBY**

me. Accordingly, I filed a lawsuit against Wilson in the United States District Court, District of Connecticut, to recover the outstanding balance and obtained a judgment for the sum demanded.

5. In late December of 1999, Mr. Wilson offered to satisfy the judgment by providing me with an assortment of antique firearms, which were located at the Plaintiff, Martin Lane's (hereinafter "Lane") New York City gallery.

6. Thereafter, on the morning of January 14, 2000, both Wilson and I drove to Lane's New York gallery, where the three of us earmarked a collection of firearms, a written inventory of which is annexed hereto as Exhibit "B". At this meeting, Wilson and Lane gave me the items listed in Exhibit "B" and executed a signed agreement, a copy of which is annexed hereto as Exhibit "C," wherein all parties acknowledged that ownership of the aforementioned inventory of firearms was being transferred to me in satisfaction of a judgment and debt due and owing. It is these firearms that are the subject matter of the current litigation.

8. Subsequently, on March 31, 2000, Lane again acknowledged me as being the owner of the subject firearms when he executed a consignment agreement, a copy of which is annexed hereto as Exhibit "D," in an attempt to sell some of the items listed in Exhibit "B" on my behalf. Unable to secure a buyer, on July 27, 2007, Lane returned the consigned firearms to me. It is important to note that the firearms listed in the January 14, 2000 inventory are some of the same firearms listed in Exhibit "D," the consignment agreement.

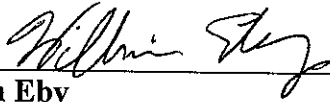
9. The Plaintiff's Complaint, a copy of which is annexed hereto as Exhibit "E", alleges, breach of contract and unjust enrichment and seeks replevin of the collection of firearms, ownership of which was transferred to me on January 14, 2000.

10. As more fully discussed in the accompanying Memorandum of Law, Plaintiff's Complaint must be dismissed in its entirety on grounds that all claims asserted therein are barred

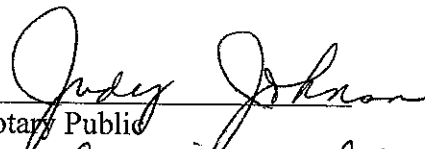
by the applicable statutes of limitations, and Plaintiff cannot otherwise prove any facts in support of his claims such that would entitle him to relief.

11. Also, as more fully discussed in the accompanying Memorandum of Law, Plaintiff's claims are frivolous and exemplify the type of dishonest business transactions in which the Plaintiff has been involved in the past. See article annexed hereto as Exhibit "F".

**WHEREFORE**, it is respectfully requested that this Court grant the within application in its entirety, and dismiss the Plaintiff's Complaint against the Defendant, William Eby, with prejudice, and for such other and further relief as this Court deems just and proper.

  
\_\_\_\_\_  
William Eby

Sworn to before me this  
16 day of Nov, 2007

  
\_\_\_\_\_  
Notary Public  
*My Commission Expires*  
*8-15-2011*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARTIN LANE HISTORIC AMERICANA

Plaintiff,

Case No.: 07-CV-8496

HON. JUDGE STEIN

-against-

WILLIAM EBY,

Defendant.

-----X

**DEFENDANT WILLIAM EBY'S MEMORANDUM OF LAW IN SUPPORT OF HIS  
MOTION PURSUANT TO RULE 12(b)(6) AND RULE 11 OF THE FEDERAL RULES  
OF CIVIL PROCEDURE.**



\_\_\_\_\_  
Arnold L. Kert, PLLC  
Attorneys for Defendant  
William Eby  
666 Old Country Road  
Garden City, New York 11530

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### **PRELIMINARY STATEMENT**

The Defendant, William Eby (hereinafter "Eby") by his attorneys, Arnold L. Kert, PLLC, submits the within Memorandum of Law in support of his motion pursuant to Rule 12(b)(6) and Rule 11 of the Federal Rules of Civil Procedure, seeking an order both dismissing the Plaintiff's Complaint imposing sanctions on the Plaintiff and his attorney.

### **STATEMENT OF FACTS**

In the interests of judicial economy, the facts relevant to this motion are set forth in the annexed Affidavit of William Eby, which is incorporated herein, and to which the Court's attention is respectfully directed.

### **LEGAL ARGUMENT**

#### **POINT I**

#### **STANDARD FOR RELIEF REQUESTED**

The standard for granting a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) was summarized in Jones v. Gonzalez, 2007 U.S. Dist. LEXIS 19151 (D.N.Y. 2007), wherein the Court stated the following:



In considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court must accept all of the factual allegations of the complaint as true and must draw all reasonable inferences in the plaintiff's favor. A court may not dismiss a complaint unless it appears beyond doubt...that the plaintiff can prove no set of facts which would entitle the plaintiff to relief. In deciding a Rule 12(b)(6) motion, a court's consideration is limited to the factual allegations in the plaintiff's pleading. [I]f other material is presented to and not excluded by the court, the motion shall be treated as one for summary judgment....[H]owever, affirmative defenses, such as statute of limitations claims, may be raised by a pre-answer motion to dismiss under Rule 12(b)(6), without resort to summary judgment, if the defense appears on the face of the complaint.

For the reasons stated below, the Plaintiff has failed to, and is unable to, state a claim upon which relief can be granted. Accordingly, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's Complaint must be dismissed in its entirety.

The imposition of sanctions for filing a frivolous lawsuit is governed by Rule 11 of the Federal Rules of Civil Procedure, which states in relevant part:

**(b) Representations to the Court.** By presenting to the court...a pleading, written motion, or other paper, an attorney...is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery...

**(c) Sanctions.** If...the court determines that subdivision (b) has been violated, the court may...impose appropriate sanctions upon the attorneys, law firms or parties that have violated subdivision (b)...

In the instant matter the conduct of the Plaintiff and Plaintiff's counsel is sanctionable for numerous reasons. First and foremost, all of the claims and facts asserted in the Complaint are devoid of any evidentiary support. Secondly, the causes of action asserted in the Complaint are not warranted by existing law as they are clearly barred by the statute of limitations.

## POINT II

### **ALL CLAIMS ASSERTED AGAINST EBY MUST BE DISMISSED ON THE GROUNDS THAT PLAINTIFF CAN PROVE NO SET OF FACTS WHICH WOULD ENTITLE HIM TO THE RELIEF REQUESTED.**

#### **A. The Replevin Cause Of Action Must Be Dismissed On Grounds That Plaintiff Lacks Superior Right To Possession Of The Subject Chattels And Because This Action Is Barred By The Statute Of Limitations.**

As a first cause of action, the Plaintiff seeks replevin of certain antique firearms which the Complaint alleges were sold to the Defendant pursuant to an agreement among the parties. This claim must be dismissed on grounds that at all times mentioned in the Complaint, the Defendant was and still is the titled owner of the chattels mentioned therein, and is entitled to their possession.

An action to recover a chattel lies only where a plaintiff has a right to possession of the chattel superior to that of the defendant at the time the action is begun. Dubied Mach. Co. v. Vermont Knitting Co., 739 F. Supp. 867 (S.D.N.Y. 1990); Jamison Business Sys. v. Unique Software Corp., No. CV 02-2887 (ETB), 2005 WL 1262095 (E.D.N.Y. May 26, 2005). In connection with a contract for the sale of goods, unless the parties agree otherwise, title passes to the buyer at the time and place where the seller completes his performance with respect to the delivery of goods. N.Y. U.C.C. §2-401 (Consol. 2007). Accordingly, at the time the seller delivers the goods to the buyer, seller no longer has immediate right to possession and has no standing to assert a claim for replevin. See Hyman-Michaels Co. V. Senior and Palmer, Inc., 256

N.Y. 266, 192 N.E. 407 (1934) (indicating, that where title has vested and remains in the buyer, the seller cannot prevail on a claim for replevin).

In support of the claim for replevin, Plaintiff's Complaint cites Jamison Business Sys. v. Unique Software Corp., 2005 U.S. Dist. LEXIS 45480 (D.N.Y. 2005). While the plaintiff in the aforementioned case did successfully assert a replevin claim, a review of the aforementioned case reveals that it is completely distinguishable from the instant litigation. In *Jamison Business Systems v. Unique Software Corp.*, the plaintiff, a computer software development firm, developed and owned the copyright to certain software that was the subject of the replevin action. Jamison Bus. Systems, 2005 U.S. Dist. LEXIS 45480 at 4-6. During the time that the plaintiff owned the copyright to the software, the defendant misappropriated the software and made an unauthorized sale of that software to a third party. Id. at 4-6. In that case, it is clear that the plaintiff never transferred ownership to the defendant nor did the plaintiff authorize the defendant to make the sale. Accordingly, at all times in the aforementioned case, the plaintiff had superior right to possession of the software.

In stark contrast to *Jamison Business Systems v. Unique Software Corp.*, the instant Complaint is absent any facts tending to demonstrate the Plaintiff's superior right to the subject chattels. Rather, the facts, as pleaded in the Complaint, illustrate that at the time this action was commenced the Defendant had superior right to possession of the subject chattels. The Complaint alleges that on or about January 14, 2000, pursuant to an agreement entered into on the same day, Plaintiff sold and delivered certain antique firearms to the Defendant.<sup>1</sup> Accordingly, absent an agreement to the contrary, U.C.C. §2-401 indicates that title to the goods in question vested in the Defendant on or about January 14, 2000. Following delivery, the

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<sup>1</sup> See Exhibit "D".

Defendant retained title to the guns and the transfer of ownership was acknowledged by the Plaintiff in writing.<sup>2</sup>

Accordingly, this claim must be dismissed because the factual allegations, even if accepted as true, demonstrate that at the time this action was commenced, the current Plaintiff did not own, nor was he entitled to immediate possession of the subject chattels.

Furthermore, this claim must be dismissed on grounds that it is barred by the statute of limitations. An action for recovery of chattel or for damages resulting from the taking or detaining of chattel is governed by a three year statute of limitations. N.Y. C.P.L.R. 214 (Consol. 2007). Where property has been wrongfully acquired, and replevin is being sought from the person who initially took wrongful possession, there is no requirement of a demand and refusal before a cause of action is established and the statute of limitations begins to run. Guggenheim Foundation v. Lubell 77 N.Y. 2d 311, 567 N.Y.S. 2d 623 (N.Y. 1991). Rather, the cause of action accrues and the statute of limitations begins to run at the time of the conversion of the property. Guggenheim Foundation, 567 N.Y.S. 2d 623 (N.Y. 1991).

In the instant action, Plaintiff seeks the return of certain antique firearms which he alleges were wrongfully converted by the Defendant on or about January 14, 2000. Pursuant to aforementioned case law, and the facts as asserted in the Complaint, the alleged replevin cause of action would have accrued on or about January 14, 2000 and the statute of limitations would have commenced to run on the same date. Accordingly, for a replevin cause of action based on the foregoing transaction to be timely it would have had to be commenced on or about January 14, 2003. However, the instant action was not commenced until October 1, 2007.

Even if this Court were to hold that a refusal of a demand for the return of the subject firearms was required for the replevin cause of action to accrue, and that Plaintiff has three years

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<sup>2</sup> See Exhibit "D".

from the time of the demand to commence an action for replevin, this claim should still be dismissed on the grounds that the Plaintiff waited an unreasonable amount of time to demand the return of the subject firearms. See Matter of Peters, 2006 NY Slip Op 6480, 7 (N.Y. App. Div. 2006) (indicating, the requirement to make a demand and receive a refusal before commencing a proceeding does not mean that the aggrieved party can, by delay in making his demand, extend indefinitely the period during which he is required to take action).

Pursuant to the facts as alleged in the Complaint, it is clear that while the Plaintiff knew that the subject chattels were in the Defendant's possession, he nonetheless waited nearly seven years before seeking replevin. Accordingly, as a result of the Plaintiff's unreasonable and untimely delay in making his demand for the return of the subject firearms, the Defendant will be unjustly prejudiced if the Plaintiff is permitted to proceed with this claim.

**B. The Unjust Enrichment Claim Must Be Dismissed On Grounds That It Is Barred By The Statute Of Limitations And The Defendant Gave Valuable Consideration For The Chattels That Form The Basis Of This Litigation.**

Plaintiff's second cause of action alleges unjust enrichment in connection with alleged non-payment for goods sold and delivered. This unjust enrichment claim must be dismissed on grounds that it is barred by a four-year statute of limitations.

Where a cause of action for unjust enrichment is based on non-payment for goods and constitutes the same allegations used to assert a claim for breach of contract, the unjust enrichment claim will be governed by a four year statute of limitations which accrues in coincidence with the breach of contract claim. Wuhu Import & Export Corp. v. Capstone Capital, LLC., 834 N.Y.S. 2d 129, 39 A.D. 3d 314 (App. Div. 1st Dept. 2007); Edward Herba Jr. et al v. Everett Chichester et al, 754 N.Y.S. 2d 695, 301 A.D. 2d 822 (App.Div. 3rd Dept. 2003).

In support of this cause of action, Plaintiff alleges that on or about January 14, 2000, Defendant took possession of certain antique firearms and that the Defendant retained the value of those firearms without remitting payment to the Plaintiff on or about the same day.<sup>3</sup> In his Complaint, Plaintiff alleges this same non-payment as the basis of his breach of contract cause of action.<sup>4</sup> Accordingly, the unjust enrichment claim is subject to a four year statute of limitations which commenced to run on or about January 14, 2000.

In order for this unjust enrichment claim to be timely it would have had to be commenced on or about January 14, 2004. However, the present action was not commenced until October 1, 2007. Therefore, based solely upon the facts as alleged in the Complaint, it is clear that this claim is barred by the statute of limitations and must be dismissed.

In addition to this claim being barred by the applicable statute of limitations, it must also be dismissed on grounds that the Plaintiff can prove no facts such that would entitle him to the relief requested.

Unjust enrichment rests upon the equitable principle that a person shall not be allowed to enrich himself at the expense of another. Saunders v. Kline, 55 A.D. 2d 887, 391 N.Y.S. 1 (App.Div. 1<sup>st</sup> Dept. 1977). An action for unjust enrichment lies where a defendant has been placed in possession of money or its equivalent under such circumstances that equity and good conscience mandate that he not retain it. Baratta v. Kozlowski, 94 A.D. 2d 454, N.Y.S. 2d 803 (App.Div. 2d Dept. 1983); Saunders v. Kline, 55 A.D. 2d 887, 391 N.Y.S. 1 (App.Div. 1<sup>st</sup> Dept. 1977).

In support of the claim for unjust enrichment, Plaintiff alleges that on or about January 14, 2000 he sold certain antique firearms to the Defendant and that no consideration was remitted

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<sup>3</sup> See Complaint Para. 5 and 20.

<sup>4</sup> See Complaint Para. 20-22.

in return. Notwithstanding Plaintiff's allegations, there exists written documentary evidence in which the Plaintiff acknowledges that the subject firearms were in fact transferred to the Defendant in satisfaction of moneys owed to the Defendant.<sup>5</sup> Accordingly, this claim must be dismissed on grounds that Plaintiff can prove no facts tending to show that the Defendant was unjustly enriched.

**C. The Breach Of Contract Cause Of Action Must Be Dismissed On Grounds That It Is Barred By The Statute Of Limitations And The Defendant Fully Performed As Contemplated By The Alleged Agreement.**

Plaintiff's third cause of action alleges breach of contract in connection with a sale of goods. This claim must be dismissed on grounds that it is currently barred by a four-year statute of limitations.

An action for breach of contract in connection with a sale of goods must be commenced within four years of the accrual of the cause of action. N.Y. U.C.C. §2-725(1) (Consol. 2007). Such cause of cause of action accrues and the statute of limitations begins to run at the time that the breach occurs, regardless if the aggrieved party was unaware of the breach. N.Y. U.C.C. §2-725(2) (Consol. 2007). Furthermore, where an agreement concerning the sale of goods leaves open the time for payment to be rendered, the law prescribes that payment is due at the time and place that the buyer is to receive the goods. N.Y. U.C.C. §2-310 (Consol. 2007).

The Complaint alleges that on or about January 14, 2000, Plaintiff and Defendant entered into a contract for the sale of certain antique firearms, that the Defendant took possession of the firearms that day, and that no payment was ever remitted by Defendant.<sup>6</sup> The Complaint does not allege that a time for payment was ever established.

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<sup>5</sup> See Exhibit "D".

<sup>6</sup> See Complaint Para. 20-22.



Given the aforementioned facts, the U.C.C. §2-310 default rule mandates that any alleged payment in connection with the transaction in question would have been due on or about January 14, 2000. Assuming the truth of the facts as pleaded in the Complaint, failure to tender payment would have constituted a breach on or about January 14, 2000 and the four year statute of limitations would have commenced to run on that same date.

Thus, pursuant to U.C.C. §2-725(2), for a breach of contract action based on the foregoing transaction to be timely, it would have had to be commenced on or about January 14, 2004. However, as the instant action was not commenced until October 1, 2007, Plaintiff's breach of contract claim must be dismissed on grounds that it is barred by the statute of limitations.

Alternatively, even if this Court were to apply the traditional six year statute of limitations as provided by N.Y. C.P.L.R. 213, Plaintiff's breach of contract claim, commenced on October 1, 2007, would still be untimely. Given that the alleged breach occurred on or about January 14, 2000, to be timely under a six year statute of limitations, Plaintiff would have had to commence this action on or about January 14, 2006.

In addition to this claim being barred by the statute of limitations, it must be dismissed on grounds that the Plaintiff can prove no set of facts such as would entitle him to the relief requested. Notwithstanding the Plaintiff's allegations, the subject firearms were transferred to the Defendant pursuant to a written agreement in which the Plaintiff expressly acknowledged the exchange of valuable consideration.<sup>7</sup> Furthermore, the contract alleged by the Plaintiff, a written copy of which is attached hereto as Exhibit "D", contemplates no further payment to be remitted by the Defendant as consideration for the subject firearms.

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<sup>7</sup> See Exhibit "D".



### POINT III

**SANCTIONS MUST BE IMPOSED ON GROUNDS THAT THE PLAINTIFF AND HIS ATTORNEY UNREASONABLY FAILED TO ACKNOWLEDGE THAT ALL CLAIMS ASSERTED IN THE COMPLAINT ARE TIME BARRED AND OTHERWISE LACK EVIDENTIARY SUPPORT.**

Rule 11 of the Federal Rules of Civil Procedure creates an affirmative duty for an attorney to make a pre-filing inquiry to establish reasonable ground to believe that further investigation and discovery will prove his case. Calka v. Kucker, Kraus & Bruh, LLP., 1998 U.S. Dist. LEXIS 11868 (D.N.Y. 1998). An attorney's pre-filing inquiry is assessed on an objective standard of reasonableness. Calka v. Kucker, Kraus & Bruh, LLP., 1998 U.S. Dist. LEXIS 11868 at 12. Conduct falls below the aforementioned standard and sanctions are required to be imposed where, based on the facts and existing precedent, it is clear that an action is destined to fail, and where no reasonable argument can be advanced to change or extend the prevailing law. Harkness Apartment Owners Corp. v. FDIC, 1993 U.S. Dist. LEXIS 10499 (D.N.Y. 1993).

In the instant matter, it can only be concluded that Plaintiff's attorney failed to do a reasonable pre-filing inquiry so as to determine if there was any evidentiary support for the claims asserted. In fact, at the time this action was commenced, there existed readily available documentation, a cursory review of which would have put both the Plaintiff and his attorney on notice that the claims asserted in the Complaint were unquestionably without merit. Furthermore, based simply on the dates as alleged in the Complaint, it should have been blatantly obvious to Plaintiff's attorney that even if there was evidentiary support for the asserted claims, they were nonetheless barred by the statute of limitations. Despite the claims being blatantly time barred, there is no reasonable argument, nor has Plaintiff set forth any argument for the extension or tolling of the statute of limitations.

Therefore, if this Court concludes that Plaintiff's claims are barred by the statute of limitations and that Plaintiff has failed to state a claim for which relief may be granted, this Court should also conclude that the instant lawsuit was frivolously filed in violation of FED. R. Civ. P. 11 and that the imposition of sanctions is appropriate.

**CONCLUSION**

For all the aforementioned reasons, it is respectfully submitted that the relief sought by Defendant, William Eby, should be granted in its entirety, and Plaintiff's Complaint dismissed.

Dated: Garden City, New York  
November 19, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. L. Kert', written over a horizontal line.

Arnold L. Kert, PLLC  
Attorneys for Defendant  
William Eby  
By: Arnold L. Kert (ALK 3106)  
666 Old Country Road, Suite 301  
Garden City, New York 11530

**EXHIBIT 'A'**

***R.L. Wilson***

**Castle View  
103-4 Ferry Road, Route 148  
Hadlyme, Connecticut 06439  
Tel: (860) 526-9297  
Fax: (860) 526-9514**

**Telegraph Hill Tower  
1730 Kearny Street, G-1  
San Francisco, California 94133  
Tel: (415) 835-5999 Fax: 5998**

**Historical Consultant  
Colt's Manufacturing Co., Hartford  
and to  
'The Art of American Arms'  
and  
'Buffalo Bill's Wild West'  
Museum Loan Exhibitions  
'Son of a Gun' - BBC-TV  
'Colt Firearms Legends' - SONY  
'The Guns That Tamed the West' - A & E  
'The Story of the Gun' - A & E  
'The Gun Industry in America' - BBC-TV/Open University  
'Buffalo Bill's Wild West' - Riva Productions  
Chairman, Antique Arms Committee  
U.S. Society of Arms and Armour/America Remembers  
The Guns of Manhattan (1999)**

**Samuel Colt Presents  
The Arms Collection of Colonel Colt  
L.D. Nimschke Firearms Engraver  
The Evolution of the Colt  
The Rampant Colt  
Colt Commemorative Firearms  
Theodore Roosevelt Outdoorsman  
The Book of Colt Firearms  
The Book of Winchester Engraving  
Antique Arms Annual  
Colt Pistols (with R.E. Hable)  
Paterson Colt Pistol Variations (with P.R. Phillips)  
The Colt Heritage  
The "Russian" Colts  
Colt Engraving  
Rare and Historic Firearms (Christie's)  
Winchester 1 of 1000  
Colt's Dates of Manufacture  
The Deringer in America, 2 Volumes (with L.D. Eberhart)  
Colt An American Legend  
Rare Firearms - A Benefit Auction (Christie's)  
Winchester An American Legend  
The Peacemakers  
Steel Canvas  
Ruger & His Guns  
The Colt Engraving Book  
The Official Price Guide to Gun Collecting**

***From Connecticut address***

**December 28th 1997**

**Wm. T. Eby  
7506 Hopkins Avenue  
College Park, Maryland 20740  
(301) 927-2181**

**Dear Mr. Eby:**

**This document is a receipt for the following item, left on consignment from yourself to me this date, for a period of up to approximately 120 days, on the basis as spelled out below:**

**Colt Texas or Holster Model Paterson revolver, serial no. 141, with 9-inch barrel (with customary *Colts Pt. Patent Arms Mfg. Co., Paterson, N.J.* barrel address marking and German silver band inlays, as also on recoil shield; oval escutcheon motif inlaid on backstrap; stagecoach holdup scene on roll-engraved cylinder); in overall excellent condition, blued, with case-hardened hammer and varnished select walnut grips; with**

accessories of a mahogany case (lined in brown velvet; breakage to lock and missing brass and steel lock mechanism), combination powder and ball flask (marked with inscription legend as on revolver barrel, around center band, and with serial no. 16), combination screwdriver/nipplewrench/loading lever/nipple pricker, walnut-handled bullet mold, cleaning rod with turned walnut handle, extra cylinder (square-backed, and marked with serial no. 110, and with roll-engraved cylinder scene), Paterson capper (large size for revolving rifle, marked no. 40), and nipple wrench (with faceted wooden handle, made for engaging Paterson four-pronged nipples), and extra Paterson-style trigger (marked no. 391).

Consigned for sale at 13% commission to seller from gross sale price; minimum gross price of \$500,000, of which approx. \$150,000 to ~~\$200,000~~ value to be trade of a Texas or Holster Model Paterson revolver in very good condition (7 1/2-inch barrel, with visible cylinder scene). It is understood that a better price than the above would warrant a better commission figure. The decision to sell at the final price is at the discretion of the seller.

R.L. Wilson

*[Handwritten signature]*  
Dec 28. 1997

N.B.  
was amended  
to 150,000

**EXHIBIT 'B'**

1 Box of Winchester Cart. (44)

1 Pennacker American Flint Rifle  
with Silver inlay

1 Cased pair of Belgian Smith pistols  
in Sequential Number

1 Frank Elliot Bowie Knife

1 Powder horn

Hermit Roosevelt's Rifle  
Bolt Action Springfield Armory Rifle

Single Action Colt ——— Well's Fargo !!

Richards Conversion 44 Caliber Revolver  
12 notch JD. 7500 - (5,200) - 6  
NEW NUMBERS !!

Buffalo Bill & Sitting Bull photograph mounted

Colt Art Model 132637 - (5,500)  
10,000 JD.

Colt Single Action Nickel Plate No. 18162  
12,500 JD. (7,500)

Colt Army 44 experimental (ivory grips, engraved  
No. 114721) 12,900

25,000 JD. William T. Day 1/14/00

Inner - 21,500 WTE

(3)

PKT 10,500 WTE

49-6" 16,500 WTE

49 5" 13,500 WTE

49 4" 11,500 WTE

Com 6,800 WTE

60 fluted 8,250 WTE

49 1, 99 7.5K 5,000 WTE

Feb Jan + 17.5K 93,750

(9400  
1)

Feb + 55K 24,000 30

Mar 39

April 39

May 30, 2000 39

139

49 -- 60602 - 5,000

1860 fluted 3572 8,250

??  
New Numbers



**EXHIBIT 'C'**

1/15/2000

This Receipt in consideration of  
goods (antique firearms) and other  
valuables William Bay has received  
from a Mr. Martin Loring of the Loring Wilson  
Agency promise to apply towards  
monies owed.

Signed William T. Bay

L. Wilson

L. Wilson



**EXHIBIT 'D'**



Martin J. Lane  
WEST HOUSTON STREET

an Consignment from  
Mr Bill Eby 3.31.2000

- ① Letter on 1860 Army Metallic Cart.  
Ingraved w/ Factory Ivory's  
SN # 114721. Colt.

No Commission on Sale  
(120 days Open Consignment)  
\$ ~~25,000.00~~ 25,000.00

- ② Cased Pair 1855 Nickel Plated  
#1 Smith & Wesson Army's  
120 day Consignment.  
\$ 10,000.00

Taken in Buy Month Case  
3-31-2000 Month Case

Returned to  
MR. EBY.  
7.27.2000  
in person

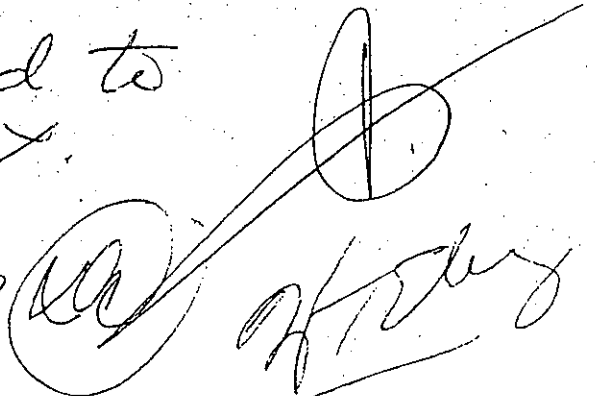
  
7/27/00

EXHIBIT "E"

DA 4-4 (Rev. 8-20) Summons in a Civil Action

## Southern

District of \_\_\_\_\_

**New York**

**Martin Lane Historic Americana**

**v.**

**William Eby**

# SUMMONS IN A CIVIL ACTION

CASE NUMBER:

07 CTV 8496

TO: (Name and address of Defendant)

William Eby  
3481 Augusta Drive  
Ijamsville, MD 21754-9040

**YOU ARE HEREBY SUMMONED** and required to serve on **PLAINTIFF'S ATTORNEY** (name and address)

Gavin P. Lentz, Esquire  
BOCHETTO & LENTZ, P.C.  
1524 Locust Street  
Philadelphia, PA 19102

an answer to the complaint which is served on you with this summons within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**

**CLERK**

OCT 01 2007

DATE \_\_\_\_\_

By) DEPUTY CLERK

JS 44C/SDNY  
REV. 12/2005**JUDGE STEIN**

CIVIL COVER SHEET

**07 CIV 8496**

Read the information contained herein for use in replacing or supplementing the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

Martin Lane Historic Americana  
205 West Houston Street  
New York, NY 10014

## DEFENDANTS

William Eby  
3481 Augusta Drive  
Jameville, MD 21754-9040

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Gavin P. Lentz, Esquire  
1524 Locust Street, Philadelphia, PA 19102

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
**DIVERSITY OF CITIZENSHIP** **28 U.S.C. § 1332**

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was the case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date

(PLACE AN (X) IN ONE BOX ONLY)

## NATURE OF SUIT

&amp; Case No.

**OCT 01 2007**

CONTRACT	PERSONAL INJURY	TORTS	FORFEITURE/PENALTY	ACTIONS UNDER STATUTES	OTHER STATUTES
<input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT <input type="checkbox"/> 155 MEDICARE ACT <input type="checkbox"/> 160 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) <input type="checkbox"/> 170 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS <input checked="" type="checkbox"/> 180 STOCKHOLDERS SUITS <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY <input type="checkbox"/> 198 FRANCHISE	<input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE <input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 810 AGRICULTURE <input type="checkbox"/> 820 JOD & DRUG <input type="checkbox"/> 825 RUG RELATED <input type="checkbox"/> 830 EIZURE OF PROPERTY <input type="checkbox"/> 835 USCS 881 <input type="checkbox"/> 840 QUOR LAWS <input type="checkbox"/> 845 R & TAUCH <input type="checkbox"/> 850 AIRLINE REGS <input type="checkbox"/> 860 OCCUPATIONAL SAFETY/HEALTH <input type="checkbox"/> 865 OTHER	<input type="checkbox"/> 422 APPEAL <input type="checkbox"/> 28 USC 156 <input type="checkbox"/> 423 WITHDRAWAL <input type="checkbox"/> 28 USC 157 <input type="checkbox"/> 420 COPY RIGHTS <input type="checkbox"/> 425 PATENT <input type="checkbox"/> 430 TRADEMARK	<input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTI TRUST <input type="checkbox"/> 420 BANKS & BANKING <input type="checkbox"/> 430 COMMERCE/CC <input type="checkbox"/> 440 RATES/ETC <input type="checkbox"/> 450 DEPORTATION <input type="checkbox"/> 460 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) <input type="checkbox"/> 470 CONSUMER CREDIT <input type="checkbox"/> 480 CABLE/SATELLITE TV <input type="checkbox"/> 490 SELECTIVE SERVICE <input type="checkbox"/> 500 SECURITIES/COMMODITIES/EXCHANGE <input type="checkbox"/> 510 CUSTOMER CHALLENGE <input type="checkbox"/> 520 12 USC 3410 <input type="checkbox"/> 530 AGRICULTURE ACTS <input type="checkbox"/> 540 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 550 ENVIRONMENTAL MATTERS <input type="checkbox"/> 560 ENERGY ALLOCATION ACT <input type="checkbox"/> 570 FREEDOM OF INFORMATION ACT <input type="checkbox"/> 580 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE <input type="checkbox"/> 590 CONSTITUTIONALITY OF STATE STATUTES <input type="checkbox"/> 600 OTHER STATUTORY ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$200,000 in excess of OTHER

Check YES only if demanded in complaint  
JURY DEMAND: ☒ YES ☐ NO

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

JUDGE

DOCKET NUMBER

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

**JUDGE STEIN**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**07 CV 8496**

**MARTIN LANE HISTORIC  
AMERICANA**  
205 West Houston Street  
New York, New York 10014,

Plaintiff,

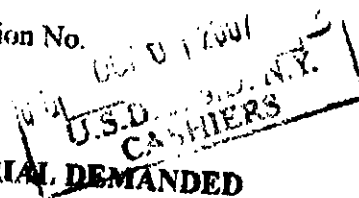
vs.

**WILLIAM EBY,**  
3481 Augusta Drive  
Ijamsville, Maryland 21754-9040,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

**COMPLAINT**

COMES NOW, Plaintiff Martin Lane Historic Americana ("MLHA"), by and through undersigned counsel, and for its Complaint against Defendant William Eby ("Mr. Eby") alleges as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1332 as the amount in controversy far exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to these claims occurred in this district.

**II. THE PARTIES**

3. Plaintiff Martin Lane Historic Americana ("MLHA") is a New York corporation engaged in the collection and resale of rare antique firearms and other collectible artifacts doing business at its gallery located at 205 West Houston Street, New York, New York 10014.



retained items.

**COUNT I  
(REPLEVIN)**

14. Plaintiff incorporates all prior paragraphs as if the same were set forth at length herein.

15. MLHA's possessory right to the aforementioned items is superior to that of Mr. Eby as they were never paid for as promised. MLHA is entitled to immediate possession of those items. *Jamison Business Sys.'s, Inc. v. Unique Software Support Corp.*, No. CV 02-4887 (ETB), 2005 WL 1262095, at \*14 (E.D.N.Y. May 26, 2005).

16. MLHA has made repeated demand for return of the items but Mr. Eby continues to refuse to return the items despite MLHA's superior rights. *Id.*

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant for an amount in excess of \$200,000 plus any such other relief this Court deems equitable and just.

**COUNT II  
(UNJUST ENRICHMENT)**

17. Plaintiff incorporates all prior paragraphs as if the same were set forth at length herein.

18. By continuing to retain the items that belong to Plaintiff and to which Plaintiff has a superior possessory right, Defendant is being enriched at Plaintiff's expense.

19. Equity and good conscience militate against permitting Defendant to retain the items that are unlawfully in his possession as MLHA was never paid as previously agreed.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant for an amount in excess of \$200,000 plus any such other relief this Court deems equitable and just.

*June* - 21,500 WTS  
*PKT* 10,500 WTS  
*49-6"* 16,500 WTS  
*49 5"* 13,500 WTS  
*49 4"* 11,500 WTS  
*Com* 6,800 WTS  
*60 plot* 8250 WTS  
*Apr 1, 11 750* 5,000 WTS  
*Feb Jan* 17.5K 93, 150  
*Feb* 5.5K  
*Mar* 29  
*April* 29  
*May 30. 2m* 29  
*49 - - 60602 -* 5,000  
*1860 FLOTER 3572* 8250

9400  
 1  
*K*



EXHIBIT "F"

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## The 2007 Collectors Guide

### Smoking Gun

David Armstrong 12.25.06



**The king of the antique firearms business, Larry Wilson, sits in prison. Is he a con artist—or did he just shoot himself in the foot?**

To his defenders, Robert L. (Larry) Wilson is the most prominent expert in collectible antique firearms, a scholar who pops up in the middle of almost every major transaction in the gun trade. "He's the king," says his friend, sometime business partner and New York antique dealer Martin Lane. "His research single-handedly made this hobby what it is. This stuff wouldn't be worth nearly what it is if it weren't for Wilson."

To his detractors Wilson is a con man, snookering the collecting elite and part-time hobbyist alike, artificially pumping up the value of old guns and working with a network of conniving dealers who profit off the inflated values. Sometimes, his accusers say, he simply steals guns outright. "At best, he's been abusive of his position; at worst, a total crook," says Jim Gordon, who serves on the board of the Buffalo Bill Historical Center in Cody, Wyo.

Whatever the case, Wilson, 67, sits in a federal penitentiary in Lompoc, Calif. He is serving a 12-month-and-one-day sentence after pleading guilty last year to cheating a California seller out of a \$500,000 1840 Colt Paterson revolver that once belonged to the son of French King Louis-Philippe. He'll be released three days after Christmas; in March he will head to a juried trial in Louisville, Ky. to face criminal charges in a separate case, where he could get an additional 11 years. In an eight-page letter from prison, Wilson says he's innocent of all new charges, the victim

of an overzealous attorney, jealous dealers and "wannabe" scholars who

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Trading Center

resent his success and influence in the gun trade. "After my unprecedented contributions to the study of arms, to arms collecting," he writes, "my treatment ... is disgraceful."

Indeed, Wilson has had both success and influence. For more than four decades he has written more extensively about historical firearms in the U.S. than anyone else, producing 42 books, including the definitive history of Colt firearms and an exhaustive guide to Colt serial numbers and manufacturing dates, the bible for dealers and collectors. He's written many catalog essays and articles, has sat on the boards of the nation's major antique gun museums—and has been kicked off at least one. He has also been the go-to guy in documentaries on gun history for the Discovery, A&E and History channels. For collectors his acknowledgment of a gun's provenance and value was widely considered the last word. "For years I was educated by Larry. He knew everyone, all over the world," says New York financier Donald Zilkha, who bought Colt's Manufacturing Co. in 1994.

The son and grandson of Presbyterian ministers from Minnesota, Wilson developed a passion for antique guns matched only by a carefully cultivated image of the gentleman adventurer. His Hadlyme, Conn. home was filled with curiosities: a full-size replica **Wells Fargo** (nyse: WFC - news - people ) stagecoach in the middle of the living room, an 1893 roulette table and built-in vaults that held his own collection of rare firearms, and a vast trove of books. A stuffed boar and lion inhabited the place, along with hyena and baboon skulls, trophies from the nine expeditions Wilson made to Africa, accompanied by the likes of former Treasury Secretary William Simon and wealthy art dealer Alec Wildenstein. Wilson regularly attended, and participated in, the Mille Miglia, once driving a rare 1947 Cisitalia in the annual recreation of the famed Italian cross-country race from Brescia to Rome. "He was trapped in a society that he tried to keep up with, the world of the rich and famous, and he couldn't do it," says John Malloy, a collector who has known Wilson for at least 30 years.

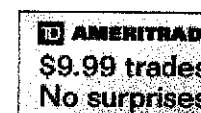
To many who know him, Wilson is no crook, just a befuddled scholar—a freelance appraiser and author with little business acumen who got in over his head financially even as gun owners, relying on his expertise and connections, trusted him to act as a middleman in their deals. They say Wilson never really recovered after sinking as much as \$500,000 into *In the Blood*, a feature-length movie in 1989, shot in Africa, re-creating Theodore Roosevelt's 1909–10 hunting expedition. Directed by *Pumping Iron* auteur George Butler, the film got good reviews—but no audience.

The deal that landed him in jail is vintage Wilson. In 1999 the owner of the Colt Paterson, a gun that once belonged to the Duke of Orléans, entrusted Wilson to find a buyer, for \$500,000 in cash. Soon after, Wilson sold the gun through Lane to another collector for \$250,000 and a handful of lesser-valued guns but repeatedly told the seller that he needed more time to close the deal, according to a lawsuit filed by Antiques & Arts Trading Consultants, the seller. The suit claims Wilson used the money to repay debts he owed Lane and others—including William Eby, with whom Wilson also had an earlier agreement to sell a different \$500,000 Colt pistol—and to fund Wilson's "extravagant lifestyle." Wilson declared bankruptcy in January 2001. The seller later won a nondischargeable \$750,000 claim against Wilson, the sum of what's due with interest and other fees, though it has received only \$50,000.

Last year, Wilson says, the lawyers hounding him for the money got the U.S. district attorney in Connecticut involved, and Wilson—believing he wouldn't serve any time in jail, say people close to him—pleaded guilty to one count of wire fraud in connection with the case. In his letter Wilson admits there is "partial payment due" on the deal but says the federal case was pushed by the seller's lawyer in an attempt to use the federal government "as their bill collector."

In the wake of his bankruptcy Wilson's Connecticut home was auctioned off for \$1 million. Other gun sellers turned up with similar stories about being stiffed—with more than \$800,000 owed to Lane for previous deals;

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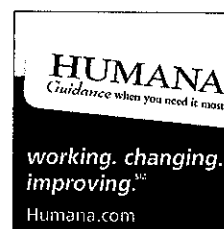
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New & Notable



\$250,000 to auction house Bonhams & Butterfields; \$400,000 to a gun seller in Akron, Ohio; and \$50,000 to a doctor in South Dakota. Joseph Imbrognio of Mechanicsburg, Pa. claims he engaged Wilson in 1999 or 2000 to sell a \$40,000 Colt Walker that had been in his fiancée's family for 80 years, a gun believed to have been with the famed Texas Ranger, Samuel Walker, in Mexico. He never saw the gun (or the money) again. "I tell everyone who will listen that Wilson is a thief," he says.

The National Cowboy & Western Heritage Museum in Oklahoma City in 2000 gave Wilson 100 guns to sell. After his bankruptcy, only 37 were accounted for. Still the museum's curator Richard Rattenbury defends Wilson: "The situation with us was disappointing, but there's no doubt he's always been honest with me."

Suspicious about Wilson first surfaced in the late 1970s and early 1980s when he was working as a pro bono adviser to the Colt Firearms Collection at the Museum of Connecticut History. Wilson arranged a series of five trades with the museum, including one in which he swapped a double-barreled Colt rifle that he bought for \$15,000 to the museum for nine other guns, six of which he soon sold for \$44,000. In another trade Wilson gave seven guns worth \$43,000 to the museum in return for 16 guns he would later value at \$84,000.

After an 18-month investigation, then state attorney general Joseph Lieberman filed a report to Connecticut governor William O'Neill in 1988. Given the wide-ranging values by different appraisers of items moving in and out of the museum, Lieberman could not prove that a crime had been committed. Wilson says his profits were the result of "dumb luck" and "a typical markup" over the years since he owned the guns. Current museum president Dean Nelson tracked the guns in later deals and is convinced Wilson profited handsomely. In 2004, he says, the FBI in Louisville, Ky. asked for those records.

None of this, apparently, was known to Owsley Brown Frazier when he started to build a vast gun collection in 1997. The 71-year-old former vice chairman of Brown-Forman, makers of Jack Daniel's whiskey, among other brands, turned first to Michael Salisbury, a relative unknown in gun collecting circles who had met Frazier through a mutual friend. For the next five years Salisbury, acting on Frazier's behalf, bought hundreds of guns, including 19th-century Colts and Winchesters. In late 2000 Salisbury tapped Wilson to appraise the budding collection. Wilson flew to Louisville, met Frazier and was quickly brought into the fold. Frazier had 46 guns at the time, and Wilson signed off on a \$5.5 million appraisal, almost twice what Frazier had paid.

By the middle of 2001 Frazier was committed to the idea of building a gun museum and charged Salisbury with building a "world class" collection. Court documents say Salisbury bought more than 400 guns in 16 months. Meanwhile, Wilson made many trips to Louisville to advise on acquisitions and plans for the museum. He introduced Frazier to the head of the British Royal Armouries—the U.K. museum dedicated to arms and armor; now, thanks to Wilson, the third floor of Frazier's museum contains the Royal Armouries' only U.S. outpost. He persuaded Frazier to spend \$300,000 to support research on a history of women and firearms, *Silk and Steel* (Random House, 2003).



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**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )

: ss.:

COUNTY OF NASSAU )

I, KARLEEN TISCHLER, being duly sworn, states as follows: I am employed in the County of Nassau, State of New York by Arnold L. Kert PLLC. I am over 18 years of age and not a party to the action. My business address is 666 Old Country Road, Garden City, New York 11530.

On November 19, 2007 I served the following documents:

NOTICE OF MOTION PURSUANT TO RULE 12 (B)(6) AND RULE 11 OF THE FRCP  
TO DISMISS PLAINTIFF'S COMPLAINT

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Gavin P. Lentz, Esq.  
Bochetto & Lentz, P.C.  
1524 Locust Street  
Philadelphia, PA 19102

  
KARLEEN TISCHLER

Sworn to before me this  
19<sup>th</sup> day of November, 2007.

  
Notary Public

SANDRA R. COHEN  
Notary Public, State of New York  
No. 62-4505353  
Qualified in Suffolk County  
Commission Expires May 31, 2011



Case No. 07-CV-8496

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARTIN LANE HISTORIC AMERICANA

Plaintiffs,

-against-

WILLIAM EBY

Defendants.

NOTICE OF MOTION

ARNOLD L. KERT PLLC  
ATTORNEY AT LAW  
ATTORNEYS FOR DEFENDANT  
666 OLD COUNTRY ROAD, SUITE 301  
GARDEN CITY, NEW YORK 11530  
TEL: (516) 222-1860 - FAX: (516) 222-1713

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Signer's Name: ARNOLD L. KERT

Service of a copy of the within  
Dated: \_\_\_\_\_

is hereby admitted

Attorney(s) for

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named Court, at  
on \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_

Dated: \_\_\_\_\_

ARNOLD L. KERT PLLC  
666 OLD COUNTRY ROAD  
GARDEN CITY, NEW YORK 11530  
Tel: (516) 222-1860